

**MINUTES  
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK  
FUND PROGRAM**

**July 8, 2008**

**ANNUAL STRATEGIC PLANNING SESSION  
NEAL SMITH NATIONAL WILDLIFE REFUGE  
PRAIRIE CITY, IOWA**

Jim Holcomb, Chairperson in the absence of Susan Voss, called the Iowa UST Board meeting to order at 10:00 A.M. A quorum was present. Roll call was taken with the following Board members present:

Doug Beech  
Jim Holcomb  
Tim Hall (for Richard Leopold)  
Nancy Lincoln  
Jeff Robinson  
Stephen Larson (for Mike Fitzgerald)  
Susan Voss (arrived during break for lunch)

Also present were:

David Steward, Attorney General's Office  
Scott Scheidel, Administrator  
James Gastineau, Program Administrator's Office  
Lacey Skalicky, Program Administrator's Office  
Elaine Douskey, Iowa Department of Natural Resources  
Brian Tormey, Iowa Department of Natural Resources

***STRATEGIC PLANNING SESSION***

Mr. Holcomb reviewed the agenda for the day, which included a morning session of Strategic Planning for the current fiscal year (2009) and a regular Board meeting following a break for lunch.

## **I. Evaluation of Past Program Goals and Program Status**

### **A. Current Program Status**

Mr. Scheidel reviewed with the Board the updated annual narrative that outlines the current status of the Program as well as gives a historical perspective on the origin of the Program and changes that have occurred over the life of the Program.

Mr. Scheidel explained the legislative intent of House File 447, which was codified under Iowa Code 455G in 1989. He noted the following topics:

- “Adequate and reliable financial assurance for the costs of cleanup on pre-existing releases” has been addressed by the Remedial and Innocent Landowner Programs to clean up releases that occurred prior to October 26, 1990.
- The Insurance Program was designed to “create financial responsibility assurance mechanism (insurance) to pay for future releases.” This program was transferred to the private sector in 2000.
- The “Fund was designed to be an interim measure” as suggested by the sunset date scheduled for June 30, 2016.
- The Board has cooperated with the Department of Natural Resources to address leaking underground storage tank (LUST) sites to “minimize societal costs and environmental damage.”
- Board assistance has helped to “maintain Iowa’s rural petroleum distribution network” by providing cleanup for pre-existing conditions of petroleum contamination, as well as, enabling an ongoing financial responsibility mechanism for UST sites.

In reviewing this narrative, funding and operational issues were covered. Mr. Scheidel stated that the review was to both give a broad perspective status of the Program and to help keep the focus of the Program over its lifetime as a framework before discussing the more immediate goals.

Mr. Scheidel discussed the Remedial Program and summarized the cost of all claims paid under different claim types. To date, the UST Fund had paid \$180,983,223.21 in remedial claims, \$14,555,529.88 in retroactive claims, and \$22,598,256.98 in innocent landowner claims since the inception of the program. He also summarized the Loan Guarantee Program, stating that only one loan guarantee remained in the program. The balance of that loan totaled \$27,902.83 on 6/30/08, and the maturity date was in 2014. Mr. Scheidel then made note of the Insurance Program, which had been transferred to a private insurance company in 2000.

Regarding Iowa UST Program funding, Mr. Scheidel explained that the Program received 77% of the annual tank registration fees collected by the Department of Natural Resources (DNR), which last year resulted in a transfer of over \$400,000 to the UST Fund. He stated the bulk of the current funding came from the allocation of \$17M from the Environmental Protection Charge (EPC). Also, Mr. Scheidel made reference to the bonds issued to fund the Program,

and he noted that recent legislation required the Board to payoff the 1997 bonds and defease the 2004 bonds by 6/30/08; therefore the Board no longer had debt service payments.

Next, Mr. Scheidel summarized the various Funds used by the Iowa UST Program to achieve the Board's goals. He stated the Revenue Fund received the EPC monies on a quarterly basis, as well as, the tank management fees annually. Bond debt service payments were transferred semi-annually to the UST Bond Fund to issue payments to bondholders, and excess funds were transferred to the Unassigned Revenue Fund after those debt service payments were met. Going forward, there will be no debt services payments to make. The Comprehensive Fund had previously received EPC monies in 1989 and 1990, however this fund was dissolved and the balance was transferred to the Unassigned Revenue Fund in August of 1996. The Unassigned Revenue Fund received the excess funds from the Revenue Fund semi-annually, and most of the Board's administrative expenses were paid from this fund.

Mr. Scheidel went on to explain that the Remedial Non-Bonding Fund paid remedial and retroactive claim payments. The Marketability Fund currently received the interest collected on the Innocent Landowner Fund. The Innocent Landowner Fund paid innocent landowner and global settlement claim payments, and was primarily funded by the large settlements from several major oil companies. The No Further Action Fund had also become defunct, when the legislature eliminated the fund in 2000 transferring the balance in excess of \$11M to the pooled technology account for the State of Iowa. He stated the Loan Guarantee Fund was used for the guarantee of loans, as previously discussed. The Insurance Fund was defunct after the payment of its balance to a private insurer, which took over the Board's Insurance Program in 2000. The Aboveground Storage Tank Fund was defunct after that program ended, and the UST Bond Fund and the UST Capital Reserve Funds now carried a zero balance after the payoff of 1997 bonds and the defeasance of 2004 bonds.

Regarding operational issues, Mr. Scheidel discussed the basic tools used by the Board to follow its mission. He stated that the prior contract approval requirement was used to control costs. The use of 28E agreements were used to implement a cooperative effort between the Board and various State agencies, like the DNR. He explained that the community remediation program allowed for multiple or co-mingled sites within the same community to be addressed in concert by hiring one groundwater professional to address the entire area. Five specific innovative technology projects were implemented with cooperation with the U.S. Environmental Protection Agency (EPA) to demonstrate the cost effectiveness of certain technologies at sites in Shenandoah and Council Bluffs. Those projects had mixed results, but Mr. Scheidel noted that the Board continues to encourage innovative technologies as an option to be compared against known technologies on some sites.

He explained the evolution of the risk based corrective action (RBCA) report, and the current status of the RBCA rule before the Administrative Rules Committee, which was not fully supported by the Board due to ancillary items within the rule beyond its recalibration. Mr. Scheidel referenced the rural distribution network, stating that the recent natural disasters in Iowa have left some communities without nearby petroleum distributors. He noted the previous upgrade benefit from the UST Fund assisted distributors and helped to maintain the rural distribution network, as well as, the UST removal provisions of the UST Fund have. He also noted that the Board offers 100% funding to claimants who claimed financial hardship and met the standards of it. And he discussed brownfield redevelopment stating that many

governmental subdivisions acquired properties through eminent domain or through delinquent taxes to redevelop abandoned LUST sites with the benefit of 100% funding.

Mr. Scheidel explained that the Innocent Landowners Program was utilized for claims received after the remedial program deadlines. One issue with the program was that the Innocent Landowners Fund had less than \$10M remaining to address innocent landowners claims with reserves totaling \$8.5M. He noted that due to the reduced balance following a large transfer of funds to defease bonds in late FY08, the Board would likely need to address the issue of permanent or temporary suspension of new ILO claims acceptance.

Mr. Scheidel discussed other tools used by the Board included privatization of the Insurance Program, technical training for certified groundwater professionals, UST installers and UST inspectors, and owner/operator outreach. He noted the last owner/operator outreach included five public meetings held throughout the state to discuss with owners/operators the UST Board claim prioritization rules in 2002. Rule review was exercised by the Board in 2002, when the entirety of the Administrative Rules were reviewed and streamlined to be made current; however the changes in rule did not change the substantive operation of the Program. He added that the Aboveground Storage Tank Program had ended during FY07, as that was a temporary program to assist with the upgrade or removal of aboveground storage tanks. Lastly, he mentioned the loss portfolio transfer (LPT) option available to the Board to end its liabilities associated with LUST sites. A small LPT was completed between the Board and Petroleum Marketers Management Insurance Company (PMMIC) for 10 sites in March 2007.

Mr. Scheidel discussed the reduction in claim count referenced on the June 2008 monthly activity report, as well as, the invoice types paid in terms of dollars and percentages. The bulk of claim payments over the life of the program were paid for site assessment. And the majority of claim payments paid during FY08 were paid for monitoring (24%) and over-excavation (22%). He stated the shift in emphasis shows that most LUST sites have been assessed and actions during the past year were taken to move them toward closure. Similarly, a chart regarding LUST site classifications showed that 77% of all LUST sites were classified No Action Required (NAR).

Mr. Scheidel explained the status of the Loan Guarantee Program as of 6/30/08, stating again that only one loan remained outstanding and was scheduled to mature in 2014.

Mr. Gastineau presented a memo regarding the remedial innovative technology (REMIT) and community remediation projects (CRP) that were either completed/terminated during fiscal year 2008 or remained open going into fiscal year 2009. He summarized the activities of each project for the Board. Highlights from the last year included the termination of projects in Vinton, and other projects in Charter Oak and Minden were expected to be complete during calendar year 2008. Mr. Scheidel pointed out that the project in Vinton was performed on a pay for performance basis that turned out to be very successful.

Mr. Scheidel next directed the Board's attention to a spreadsheet and series of graphs containing fiscal year end data from 1990 to 2008. Data included in the spreadsheet and in the graphs included total numbers of open claims by year and total amount of outstanding reserves by year, as well as, totals for individual claim types (remedial and ILO). Additionally, the graphs provided a comparison between the outstanding reserves of each claim type and its corresponding fund balance. Mr. Scheidel noted that the graphs illustrated the trend as claims

were closed throughout the program as the number of open claims and the reserves decrease year after year. Again, Mr. Scheidel made reference to the bond payoff and defeasance in late FY08, and the effect on fund balances, as one chart showed the Innocent Landowners Fund balance and the total reserves of innocent landowners claims were dangerously close at the close of the fiscal year. Another graph incorporated DNR LUST information, and Mr. Scheidel noted that the number LUST sites had always been higher than open UST Fund claims, as some sites were not eligible or new releases, etc. He stated the trend across that chart showed the numbers of LUST sites as well as open UST Fund claims were decreasing at a steady rate. Mr. Larson inquired about the effect of the 1993 Midwest flooding on the number of LUST sites. Mr. Scheidel explained that it was difficult to tell if any flood-related releases contributed to the contaminant plume at a LUST site, as any release would be washed away from the source site and be impossible to track. Ms. Douskey concurred stating the DNR couldn't get a handle on the full effect of the flooding event on LUST sites. Mr. Scheidel again pointed out the sharp decreases in claim count and claim reserves in certain years shown in a bar graph, which were due to the claims adjusters at GAB Robins reviewing all open files for activity and adjusting reserves or closing claims on sites that had little or no activity for a significant period of time. The Board discussed the projections for the program and what could be expected at the end in 2016.

Mr. Scheidel highlighted the fiscal year to date financial statement as of May 31, 2008, comparing the actual receipts and expenditures with the budgeted receipts and expenditures. He pointed out a large discrepancy between budgeted and actual remedial claim payments; only \$5M remedial claims were paid out when \$11M were budgeted for payment. Following the financials, Mr. Scheidel reviewed a spreadsheet of projected cash flows available for corrective action costs.

#### *B. Status of 28E Agreements*

Mr. Scheidel reviewed with the Board the 28E Agreements the Board has entered into since the inception of the program, noting that 5 of the 21 agreements had expenditures in FY08.

#### *C. Attorney General's Report*

Dave Steward explained to the Board that he has most recently worked on drafting various agreements for the Board, in addition to his work with the DNR to bring individuals with orders against them to district court for enforcement on UST matters. He stated that Tim Benton continued to work on the backlog of UST Fund appeals, and he received only two new appeals in the past year.

Mr. Steward reminded the Board that the administrative contract with Aon would expire in December, and he would bring a draft of the 3<sup>rd</sup> extension to the 2004 contract to the August Board meeting for discussion. He noted that the extension would include a 5% fee increase per the original contract. Lastly, he stated that the contract would have to be re-bid in 2009, and he expected the Board should begin discussing the requirements for the request for proposal (RFP) in August of next year to be prepared to go through the process and begin a new contract in 2010. He noted that because the last contract could last six years, it may be the final RFP process the Board would complete, and therefore the RFP could include specific information about how to close out the program.

#### *D. Prior Year's Goals*

##### *a. Remedial Program -- "Getting Sites to Closure"*

Mr. Scheidel reviewed with the Board the goals set in August 2007 to continue to close UST sites. A goal of 165 claims closed was set to measure the Boards' progress for closing sites, and 179 (gross) claims were closed. The fiscal year saw a reduction in claim count by 137 claims (net). Also, the Board had set a goal to complete 100 corrective action meetings, however only 94 meetings were completed during FY08. He also stated that an additional group of 49 sites were pending no action required (NAR) classifications upon review by the DNR.

Mr. Scheidel explained that the Board had set a goal to evaluate and make a decision regarding a proposed transfer of liabilities to PMMIC under a loss portfolio transfer (LPT). The group of sites for which PMMIC had indicated interest included sites with open UST Fund claims and also PMMIC insurance policies in force. He stated the Board had approved a request for information (RFI) as a method to determine whether bidding such a transfer proposal was practical; however the RFI was placed on hold due to the funding changes presented by 2008 legislation resulting in a large reduction in available capital for a transfer transaction. He noted that he had obtained data from PMMIC regarding claims paid on sites from the mini-LPT that the Board entered into in March 2007. Net paid out on the 10 claims since the transfer to date was \$71,091.81 with one claim closed. He reminded the Board that the cost of the LPT to the Board was in excess of \$511,000.

##### *b. Maintain Short and Long Term Solvency*

Another goal set by the Board was to coordinate with the DNR to establish and implement a plastic water line policy that would draw from the actual experience in Iowa and other states as well as the study data available, specifically the most recent study completed at Iowa State University. He noted that very little was accomplished throughout the year because the DNR wanted to wait for the ISU study to become published prior to discussion. In the past 30 days the DNR and the Administrator's staff had met to discuss the issue. He noted that the current payment authority policy for plastic water lines was to evaluate on a case-by-case basis depending on the cost benefit and the proximity to an actual plume.

Mr. Scheidel explained the progress of the risk based corrective action (RBCA) model, as the Board had set a goal to continue to move forward to implement the recalibrated model as recommended by the software investigation committee (SIC). He explained the history of the expanded DNR rule as presented to the Environmental Protection Commission (EPC) and eventually the Administrative Rules Review Committee (ARRC), and he noted that many stakeholder groups, including the Board, had petitioned the DNR to amend the rule to reduce the financial and regulatory burden on the industry for a theoretical issue yet to be demonstrated as actual by DNR. The DNR moved forward with the rule without any changes. Mr. Scheidel projected that the ancillary items stated within the DNR rule would ultimately cost the Board an additional \$100,000 (on low end) to \$3 million (on high end) each year for additional assessment of sites. That additional assessment was not projected to result in any additional expenditure on remediation.

Regarding well closure, Mr. Scheidel explained that the Board had set a goal to work with DNR to implement formal guidelines for well closure orders from DNR legal staff by the end of calendar year 2007. Although the DNR had drafted guidance for internal use to implement the closure of abandoned, private water wells, the Board had neither received a document nor a memo outlining those guidelines for reference. Additionally, the DNR staff had been advised of wells in three communities which appear to meet the definition of abandoned wells, yet no known actions have been taken to abandon the wells.

The Board's goal regarding a no further action (NFA) agreement with DNR was intended to provide for remedial activities at sites, which had previously been issued NFA certificates by the DNR, to clean up contamination that was later shown to pose risk. The proposed agreement was provided to DNR in May 2007, and the DNR disagreed with items excluded in the agreement including 1) sites not closed consistent to DNR rules and statutes, 2) sites closed with known errors, 3) changes in DNR regulations, 4) changes in regulated chemicals of concern, 5) failure to control which DNR has regulatory control over, 6) new release. Mr. Scheidel noted that the Board agreement would authorize payment on some excluded sites on a case-by-case exception basis. The DNR was working on alternative wording since the last meeting in May 2008. In the meantime, Mr. Scheidel recommended that the Board consider authorizing payment on 3 sites that might fall under a completed agreement, however without a completed agreement, the activity at these sites were on hold.

c. Legislative Initiatives

Although the Board did not have any specific legislative changes to pursue as a goal during the last year, Mr. Scheidel reported that the Board had retired and defeased all bonds in June 2008, due to the TIME 21 legislation that affected the bonds' security due to the change in flow of money through the Road Use Fund. Also, the Legislature diverted \$1,725,000 from the UST Fund to the DNR's snowmobile and ATV funds; however because the language passed was in violation of existing law, the Board will have to decide if they should direct the Treasurer to address the conflict.

*The Board took a break for lunch at 11:25 AM.*

*The Board reconvened at 12:24 PM, with Susan Voss as chair.*

## **II. DNR Report on UST Issues**

Elaine Douskey from the DNR presented the Board with slides showing the devastating result of the 2008 floods on UST sites throughout Iowa. Mr. Hall described the efforts of DNR and field office staff to recover tanks, mostly propane tanks, from the flooded areas. He stated that the US Geological Survey provided maps using GPS of sites with high water marks. Mr. Tormey explained that the DNR worked closely with FEMA and the EPA Region VII to implement emergency policy and guidance to DNR staff and to UST owners. He noted the remarkable efforts of field office staff to evaluate and inspect UST sites for damage, and he stated that reports flowed in from the field offices in large numbers. He also stated the UST/LUST staff worked well with the field offices in terms of daily meetings and updates. Discussion moved to the effects of flooding on LUST sites, and how it may or may not change the contaminant concentrations at sites; however DNR didn't track the changes to LUST plumes following flooding events and didn't benchmark flooded sites specifically. Ms. Douskey explained that DNR would wait to see what type of trends develop.

Elaine Douskey of the DNR provided the Board with a summary of the last fiscal year's activities at the DNR stating that one LUST staff position was filled, and EPA funding was secured for the corrective action meeting coordinator, and for ½ of the legal staff attorney position. She also discussed the administrative rules revisions to Chapter 135 with regard to owners and operators requirements for secondary containment, fuel delivery prohibition, and the installer licensing program. She stated that the RBCA model rule filing was given a 70-day delay. Next, Ms. Douskey reported the DNR had 90% of all sites inspected in 2007 to prepare for the bi-annual third party compliance inspection program, and she noted that the resulting compliance rate for UST sites had dropped from 70% to 48%. She felt positive about the rate, because problem sites can't be fixed until they are identified. She stated the majority of non-compliant owners were citing funding problems. She explained that the DNR had certified 23 individuals as compliance inspectors, and DNR had developed a manual and inspection forms for the new program, as well as, implementing a web-enabled database to track the program. Also, Ms. Douskey said there would be an installer and inspector training course in August 2008.

Regarding the LUST section, Ms. Douskey reported that about 5,900 LUST sites were identified in Iowa since the DNR started tracking LUST sites. She stated that 4,354 were closed, and 1,533 were still open. She noted that 77 sites were classified NAR so far during federal FY08, which ends September 30, 2008. She also reported that 416 memoranda of agreement (MOA) had been reached out of 818 corrective action meetings over approximately 4 years. Sites for which a MOA was reached had resulted in expedited corrective action about 1/3 of the time, as well as, Tier III for 1/3 of sites, and installation of remediation systems for 1/3 of the sites approximately.

Going over DNR's goals for FY08, Ms. Douskey stated that moving forward with and closing LUST sites would always be a DNR goal by implementing corrective action at high risk sites through the use of corrective action meetings, meeting their NAR goal, classifying sites that are currently unclassified, and adopting rules regarding the re-calibrated RBCA software. Ms. Douskey also said that the UST section goals including inspector and installer training in August, and owner and operator training for which rules were to be drafted.

With regard to the RBCA rule that DNR filed with the ARRC, Ms. Douskey stated that because the rule was given a 70-day delay, the DNR would now have to work with water supply representatives to address the well assessment procedure and make that information accessible to the public. She stated that the additional assessment would be optional to those sites for which a Tier II was already completed. Mr. Scheidel said that some sites with old Tier II's have had benzene degrading over several years since the Tier II was done, and therefore the data within the original Tier II remained the same. The only way to capture the rate of degradation at the site would be to complete another Tier II to compare. According to the new rule, the new Tier II assessment would subject the site to a completely new receptor evaluation that is outside of the RBCA modeled-plume. Currently, the only way to evaluate the degradation of benzene over time is to complete a new Tier II; therefore it is not optional to avoid the additional assessment. And out of the 350 high risk sites classified under the old Tier II model, Mr. Scheidel expected a significantly higher number of high risk sites based on water well receptors in a larger area surrounding the site, in most cases beyond the actual or projected plume. Ms. Douskey didn't believe the number of high risk sites would increase as



much as he thought it would, noting that the DNR would evaluate sites through defining layers about susceptible wells vs. non-susceptible wells and many sites would drop out as a result.

Then Ms. Douskey reported that a goal for the DNR included reviewing all reports pending a NAR classification and getting those completed and classified. Mr. Scheidel inquired about the low risk sites stating that of 436 low risk sites approximately 235 of them were classified low risk over 5 years ago. He asked if the DNR would be willing to discuss closing out some of those sites that have been monitored without remediation for so long. Ms. Douskey replied that would probably require a rule change.

When asked about plastic water lines discussions, Ms. Douskey explained that DNR had a meeting with Mr. Gastineau to discuss plastic water lines, and they planned to research the ISU study and the AWWA standards and to get someone from the Department of Public Health involved to discuss the issue. They planned another meeting for August, and Mr. Gastineau stated he was focused on comparing Iowa standards to the standards in other states. He noted that South Dakota was the only other state that had numerical standards for plastic water line replacement. He had yet to see the document showing how the Iowa numerical standards were developed from the DNR. After additional discussion about the cost of the current policy, the Board moved on to new program goals.

### **III. Program Goals—Fiscal Year 2009**

Mr. Scheidel stated that UST Fund goals would fare much better if the DNR had coordinated goals so that they worked together and would hold each other accountable for the success of those goals. Mr. Tormey replied that the UST Fund might prioritize those goals to make them more achievable for the DNR.

Next, Mr. Scheidel noted that in the Board packets was an outline with a number of issues that the Board should consider for fiscal year 2009. These issues were as follows:

#### **A. Issues from Last Year**

#### **B. Remedial Program—Getting Sites to Closure**

The Board set a numerical goal of 140 net closed claims for FY09. Also, the Board set an activity goal of 100 corrective action meetings to be held in FY09. And included in the outline, Mr. Scheidel proposed the Board again set a goal to implement RBCA model changes and to address Iowa Code sections regarding the Board's LPT authority and cooperation with DNR. Another goal set was to get the NFA agreement with the DNR completed and implemented.

#### **C. Maintain Short and Long Term Solvency**

The board discussed their general goals outlined to maintain short and long term solvency, including revenue expansion, expense controls, and DNR coordination on the RBCA model calibration, plastic water lines, and implementing other RBCA lessons learned. Therefore, goals for FY09 continued to be to work with DNR to reach an agreement regarding the RBCA model and rule and to work with DNR to develop some policy with regard to plastic water lines. Also, Mr. Scheidel offered to discuss with DNR the low risk sites that have been

monitored for more than 5 years to determine whether or not it was useful to keep those sites open and monitor them indefinitely. Mr. Tormey committed to report to the Board at its August meeting which goals could be coordinated between the UST Fund Board and the DNR.

#### **D. Comparison of Iowa UST Program with Other States' Programs**

Mr. Scheidel noted that a general comparison to other state programs was included in the Board packets as well as the entire state fund survey from the State Administrator's Conference in June.

#### **E. Legislative Initiatives**

Ms. Voss suggested the Board meet with legislators and the DNR to discuss the mission of the Board and receive legislative direction and to address the funding diversions that may ultimately prevent the Board from completing its mission. Mr. Beech suggested that stakeholders be involved as well to show constituency support for the Board's goals. Ms. Voss and Mr. Scheidel planned to schedule a meeting in the coming months.

Lastly, Ms. Lincoln submitted a motion to authorize Board counsel and the Administrator to draft and enter into a 28E agreement to provide benefits to three specific sites currently awaiting the NFA agreement with the DNR. Mr. Holcomb seconded the motion, which was passed by a vote of 5-0. Mr. Beech abstained from the discussion and the vote.

The Board took a break at 2:30 PM and reconvened at 2:50 PM.

#### **IV. UST State Fund Administrators' Conference**

Mr. Scheidel noted that the comparison tables between states' programs were included in the Board packet for their review and discussion.

#### **V. Summary**

Mr. Scheidel offered to write a synopsis of the Board's goals and supply them to DNR to facilitate coordination and DNR's report at the August meeting.

The Strategic Planning Session ended at 2:54 PM, and the Board moved into general Board business at that time.

#### **APPROVAL OF PRIOR BOARD MINUTES**

The minutes from the May 22, 2008 meeting and the minutes from the May 27, 2008 teleconference meeting were reviewed and Mr. Larson made a motion to approve both sets of the minutes, Mr. Holcomb seconded, and by a vote of 5-0 the minutes were approved.

#### **CLOSED SESSION**

Ms. Voss noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21.

## **PUBLIC COMMENT**

There was no public comment from anyone present.

## **BOARD ISSUES**

### **A. Fiscal 2009 Budget**

Mr. Scheidel presented the Board with a 13-month budget to reflect expected receipts and expenditures from June 1, 2008 through June 30, 2009. The most recent financials received from the Treasurer's Office had included data through the end of May, and several large dollar amounts were expected to have been expended in June due the payoff and defeasance of bonds. Therefore the budget presented included June 2008. Mr. Robinson recommended the Administrator revise the fiscal year 2008 (FY08) budget to include bond payoff and defeasance expenditures, and also create a 12-month FY09 budget, to clarify the entries within their respective fiscal years. Mr. Scheidel agreed that he would bring revisions of both budgets to the Board for approval at the August meeting.

### **B. Fiscal Year 2009 Reimbursement Agreement with Attorney General's Office**

Mr. Scheidel presented to the Board the proposed reimbursement agreement for FY09 with the Attorney General's Office. Mr. Scheidel noted to the Board that the Department of Justice had drafted and submitted the agreement to the Board for reimbursement of approximately \$105,000 for FY09, which was the same agreed amount as FY08. Ms. Voss stated that she wanted to discuss with the Deputy Attorney General the agreement and possibly revise it to include a provision for the Board to give feedback to the Dept regarding the performance of its legal counsel.

Mr. Beech concurred and submitted a motion to discuss with the Deputy Attorney General the idea to include "in consultation with the Board" to the agreement language to that end. Mr. Holcomb seconded the motion, which was approved by a vote of 5-0.

### **C. Treasurer's Request for Board Action re: Diversion of Funds**

Mr. Scheidel presented a memo in the Board packets stating that House File 2662, the Ag and Natural Resources budget bill was passed and signed by the Governor. The bill included a provision to move \$950,000 and \$775,000 from the Unassigned Revenue Fund to the Snowmobile Fund and ATV Fund respectively. The language in the bill does not include a provision to "notwithstanding" Iowa Code Section 455G.3, which might make the transfer of these monies illegal. Due to this omission, the Board requested that that Governor veto this portion of the bill in a letter dated May 6, 2008. No response to the letter was received and the bill was signed into law without a line item veto of the provision. Due to the conflict in the laws, Mr. Scheidel explained that it was the duty of the Treasurer, as custodian of the funds, to reconcile the language of the bill with the existing law. He also noted that the Treasurer sought direction from the Board regarding their position on the conflict and how they would like to see it addressed.

After discussing options, the Board came to a consensus. Mr. Holcomb submitted a motion requesting the Administrator send a letter to the Treasurer recommending that the Treasurer

formally seek guidance from the Attorney General's Office before allowing the transfer of funds provided in the recent law passed. Ms. Lincoln seconded the motion, which was approved by a vote of 4-0. Mr. Larson abstained from the vote.

Mr. Scheidel stated that he would update the Board members regarding the developments of the Treasurer's actions.

#### **D. 12-Month Board Meeting Schedule**

Mr. Scheidel presented a memo to the Board listing the tentative dates of the next year's Board meetings. After some discussion, the Board members agreed to change the August meeting from August 28, 2008 to August 27, 2008.

#### **E. Reauthorization of 28E for UST Closure Contracts**

Mr. Scheidel presented a memo to the Board regarding a 28E agreement between the Board and the DNR to address the tank closure and assessment of UST sites where the DNR had determined action was needed and either no responsible party was able to pay or the responsible party was recalcitrant. The initial 28E for these activities was entered into in 1997, and a new 28E was executed in 2004 for the continuation of the same services, as contracted by the request for proposal process to selected groundwater professional firms. The current agreement was set to expire in July, and the Administrator recommended that it be renewed by addendum for an additional year. He also recommended that the contracts with two groundwater professional firms be renewed for another year.

He noted that the DNR has a significant number of sites to add to the contracts under this agreement. Also, Mr. Scheidel explained that a new class of sites had been identified for possible inclusion. The new group involves UST owners who close their sites and are unable to complete site checks or tank closure within the time frame afforded to identify a release for the purpose of filing a claim, so they end up losing their right to do so. Mr. Scheidel recommended the agreement terms be expanded to include these sites so necessary work may be performed. Additionally, Mr. Scheidel recommended that the purpose of the agreement be modified to qualify that the terms of the agreement will not limit the Board's use of the vendor contracts to the implementation of the 28E agreement, nor shall the terms of the agreement be intended to limit the authority of the DNR.

Mr. Holcomb submitted a motion to extend the 28E agreement with the DNR through July 15, 2009, subject to the modifications discussed, and his vote was also to extend the 2 vendor contracts to July 30, 2009 for use in the implementation of the 28E agreement. Mr. Larson seconded the motion, which was approved by a vote of 5-0.

#### **PROGRAM BILLINGS**

Mr. Scheidel presented the monthly billings to the Board for approval.

1. Aon Risk Services.....\$ 122,726.00  
Consulting Services July 2008 -- \$67,513.00  
Claims Processing Services July 2008 -- \$55,213.00

2. Aon Risk Services.....\$122,726.00  
Consulting Services August 2008 -- \$67,513.00  
Claims Processing Services August 2008 -- \$55,213.00
3. Attorney General's Office .....\$ 5,784.50  
Services provided for Underground Storage Tank Program  
Billing for May 2008

There were no billings for outside cost recovery and litigation counsel presented for this month's meeting. On a motion by Mr. Larson and a second by Mr. Holcomb, the billings were approved by a vote of 5-0.

### **MONTHLY ACTIVITY REPORT**

Mr. Scheidel noted that the May and June monthly activity reports and opt-in reports, as well as May financials, were included in the packet for the Board to review.

### **ATTORNEY GENERAL'S REPORT**

Mr. Steward stated that he had nothing further to report.

### **CLAIM PAYMENTS**

Mr. Gastineau summarized the claim payment reports and project change orders in the Board packet.

#### **1. Site Registration 7910210 – Sunoco, Inc., LeMars**

This site was classified no further action with significant free product. A skimmer pump with final polish from a vacuum truck resulted in removal of free product to DNR satisfaction. Previous approval to \$75,000 had been granted, of which \$77,687.19 was incurred to date. Additional authority to \$83,500 was requested for monitoring well abandonment.

Motion to approve claim authority was submitted by Mr. Larson and seconded by Mr. Hall. Approved 5-0.

#### **2. Site Registration 8600808 – Goettsch Brothers Realty Inc., Bettendorf**

This bedrock site was classified low risk following an excavation. Low levels of free product have been persistent at the site, and dissolved levels were near site specific target levels (SSTL's). Previous approval to \$75,000 had been granted, of which \$84,110.80 was incurred to date. Additional authority to \$135,000 was requested for free product recovery (FPR) and a site monitoring report (SMR).

Motion to approve claim authority was submitted by Ms. Lincoln and seconded by Mr. Larson. Approved 5-0.

### **3. Site Registration 8607898 – Hometown Food & Fuel, Inc., Ogden**

This site was classified high risk for vapor receptors only. The soil was tight, but a fairly large soil plume existed. The extent of contamination might be related to pre-regulation tanks, as the site had a very long UST history. The proposed excavation was very costly due to the cost to remove and replace the site canopy, product lines and pump island and also to dig up the city street. Other options were explored, but it was decided that nothing else would likely be effective to attain a low risk or no further action status at this site. Further actions may also be necessary. Previous approval to \$75,000 had been granted, of which \$74,281.05 was incurred to date. Additional authority to \$675,000 was requested for the excavation and a SMR.

After much discussion with regard to the cost of the excavation and the receptors involved, Mr. Hall submitted a motion to approve claim authority, and Mr. Larson seconded the motion. The motion was defeated by a vote of 2-3.

### **4. Site Registration 8811086 – City of George**

This was a second Board report for this site that was classified high risk. Remediation by vapor extraction had been attempted. Contamination still existed in the vicinity of residential basements and residential sewers. An excavation in the city-street and right-of-way had been proposed. The costs of the excavation would be high due to the nature of the work in the street and around utilities; however there were no better options. Mr. Gastineau noted that this site had a large plume in tight soil; therefore a system would not likely be effective. Previous approval to \$475,000 had been granted, of which \$424,692.84 was incurred to date. Additional authority to \$750,000 was requested for a SMR, excavation, and free product recovery (FPR).

No motions were submitted for a vote regarding this site.

### **5. CRPCA 9710-07 – Akron**

This community remediation project was contracted initially in 1998 to address two sites in the City of Akron, Iowa. The original contract included site evaluation and preparation of a corrective action design report (CADR). The contract was amended in 2004 to allow for the implementation of the CADR plan including the operation of a dual phase extraction (DPE) system for two years to be followed by a Tier 3 evaluation. The sites were in the post-remediation monitoring phase, and further monitoring and/or Tier 3 activities were anticipated.

The agreement for the project was written as a 3-yr agreement with the option of three 1-yr extensions. The current contract term was set to expire on October 3, 2008, and the Administrator recommended a 1-year extension for this project (the second of three 1-yr options). Current contract authority for this project was \$447,367.79, and no change to the Board's funding authority limit was requested. Costs incurred to date were \$377,457.02.

Mr. Beech submitted a motion to extend the contract for the Akron project for one year to October 3, 2009. Mr. Holcomb seconded the motion, which was approved 5-0.

## **6. CRPCA 0406-38 – Rose Hill**

This community remediation project was contracted in 2004 to address a site in Rose Hill, Iowa, that was previously assessed under the Board authorized State Lead Closure Contract project. The high risk concerns associated with the site included one plastic water main, a sanitary sewer, and two private water wells. Since the inception of the project, minimal work had been completed due to access problems and issues regarding the wells on a neighboring property. In 2007, the private wells were closed; however the plastic water line and the sanitary sewer remain at risk. Discussions were ongoing with regard to the plastic water line pathway, because the plastic water line was not in the actual plume; and future work would be limited to annual monitoring to assess contaminant levels and determine if the plume was steady. The agreement for the project was written as a 2-yr agreement with the option of four 1-yr extensions. The current agreement term was set to expire on August 30, 2008, and the Administrator recommended a 1-year extension for this project (the third of four 1-yr options). This site was not eligible for UST Fund benefits, and a lien had been filed on the site for costs associated with the closure contract work, as well as, the assessment activities completed under this project. Current contract authority for this project was \$30,898.42, and no change to the Board's funding authority limit was requested. Costs incurred to date were \$12,945.00.

Mr. Holcomb submitted a motion to extend the contract for the Rose Hill project for one year to August 30, 2009. Mr. Beech seconded the motion, which was approved 5-0.

## **7. CRPCA 0206-28 -- Walnut**

This community remediation project was contracted in 2002 to assess three sites in Walnut, Iowa. The contract for this project was amended in 2004 to allow for the implementation of the selected corrective actions, which had included the installation of DPE system, free product recovery activities, and various Tier 3 approaches for the limiting receptors. It was anticipated that the DPE system would require 2-3 years of additional operation to meet the site specific target levels (SSTL's). Free product recovery was ongoing. The amended contract for the project was written as a 3-yr agreement with the option of three 1-yr extensions. The current agreement term was set to expire on October 1, 2008, and the Administrator recommended a 1-year extension for this project (second of three 1-yr options). Current contract authority for this project was \$450,434.48, and no change to the Board's funding authority limit was requested. Costs incurred to date were \$410,392.88.

Mr. Holcomb submitted a motion to extend the contract for the Walnut project for one year. Mr. Larson seconded the motion, which was approved 5-0.

## **CONTRACTS ENTERED INTO SINCE MAY 22, 2008 BOARD MEETING**

Since the May 22, 2008 Board meeting, the Board had entered into one new 28E agreement with the Department of Natural Resources to provide contingency funding for a staff attorney position.

## **OTHER ISSUES**

Ms. Voss recapped the meeting stating that the Board would discuss and finalize its goals for FY09 and request that DNR coordinate its own goals in cooperation with the Board. Also, she

stated that the Administrator and she would develop a letter to legislators regarding the UST Fund and its mission. She noted that she would contact the Deputy Attorney General regarding the attorney general's reimbursement agreement for FY09, as previously discussed. Mr. Steward stated that he and the Administrator would draft the 28E with the DNR to affect the no further action claims for three specific sites, as previously discussed. Mr. Scheidel would draft a formal letter to the Treasurer conveying the Board's opinion with regard to the transfer of funds from the Unassigned Revenue Fund to both Snowmobile and ATV funds of the DNR. Lastly, Mr. Scheidel stated he would bring the amended budgets FY08 & FY09 to the Board at the August meeting for approval. The next meeting of the Board was scheduled for Wednesday, August 27, 2008 at 10 A.M at the Iowa Insurance Division.

### **CORRESPONDENCE AND ATTACHMENTS**

Ms. Voss noted that there was no further business, and there being none, the Board adjourned at 3:52 P.M.

Respectfully Submitted,

Scott M. Scheidel  
Administrator